IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-09-2009

Coram

THE HONOURABLE MR. JUSTICE K. CHANDRU

W.P. No. 5083 of 2006

1. V. Audiappan
2. H. Vilvam
3. K. Krishnamurthy
4. V. Selvaraj
5. J. Selvin
6. Tmt. G. Kanthimathi
7. A. Mudizoodum Perumal
8. C. Selvaraj
9. K.G. Vimala
10. K. Amudha
11. N. Manohar
12. I S.V. Rani
13. M. Usha Rani
14. R. Malathi
15. G. Selvaraju
16. R. Surendra Purushothaman
17. V. Malliga
18. O. Maragathavalli
19. G. Usha
20. C.B. Shanthi
21. S. Ramalingam
22. C. Kalan
23. S. Jayanthi
24. T. Paul Ratnam
25. S. Mohammed Hyder Ali
26. S. Thomas
27. R. Balaji
28. A. Thiruvenkatam
29. M. Rajendran
30. S. Saminathan
31. P. Johnson
32. S. Balaraman
33. A. Muthukrishna Ramani
34. N. Thirumurthy
35. R. Padmanabhan
36. R. Radhakrishnan
37. S. Paramanandam
38. S. Malathi
39. T.S. Vijayakumar
40. S. Manohari
41. A. Sivaprakasam

42. R. Natarajan
43. R. Paneerselvam
44. K. Chitraikkannan
45. V. Renganathan
46. A. Sasikala
47. G. Malarkodi
48. V. Meenalochani
49. J. Gomathi
50. D . Mahalakshmi
51. E. Appadurai
52. M. Senthilkumar
53. T. Jayarathy
54. A.R. Sukumar
55. S. Sivabalan
56. V. Pitchumani
57. J. Mahadevan
58. S. Subramanian
59. C. Manikam
60. P. Chithanar
61. D. Muthuchamy
62. R. Krishnamoorthy
63. A. Kalimuthu
64. S. Ravindran
65. V. Ganesarathinam
66. P. Subramanian
67. A. Balasuibramanian
68. T. Joseph Basky
69. J. Prabhakaran
70. A. Rajendran
71. P. Kanagaraj
72. K. Andal
73. K. Annai .. Petitioners

Versus

The State of Tamil Nadu
rep. by the Secretary to Government
Personnel & Administrative Reform Department
Fort St. George
Chennai 600 009 .. Respondent

OA No. 4965 of 1998 filed before the Tamil Nadu Administrative Tribunal stood transferred to this Court and re-numbered as WP No. 5083 of 2006, which was filed praying to (a) call for the records of the respondent in G.O. Ms. No.126, P & AR Department dated 29.05.1998 and (b) direct the respondent to modify the said order so as to grant promotion to the applicants to the post of Assistant Section officers, with effect from 07.10.1998 on par with their juniors S. Kalaiselvan and Sivasubramanian with all consequential monetary and other service benefits such as refixaton of pay, grant of increment, payment of arrears, movement to selection grade etc.,

For Petitioners : Mr. R. Ravi
For Respondent : Mr. R. Neelakandan

Government Advocate

ORDER

The 73 petitioners, who are working as Assistant Section Officers, have filed O.A. No. 4965 of 1998 before the Tribunal seeking to challenge the order passed by the respondent in G.O. Ms. No.126, P & AR Department dated 29.05.1998 and for consequential direction to modify the said order so as to grant promotion to the applicants to the post of Assistant Section officers, with effect from 07.10.1998 on par with their juniors S. Kalaiselvan and Sivasubramanian with all consequential benefits. On notice from the Tribunal, the respondent filed a reply affidavit dated 20.08.1998 justifying the issuance of the impugned order. It was stated by the respondent that the Government has considered the entire issue and decided to take a lasting and equitable solution to the longstanding issue. In view of the abolition of the Tribunal, the matter stood transferred to this Court and re-numbered as O.A. No. 5083 of 2006.

2. In Para No.7 and 8 of the reply affidavit of the respondent, it has been averred as follows:-
"7. It is submitted that only as a gesture of good will, Government have allowed this concession, subject to the following terms and conditions (vide para 12 of the Government Order.
(i) The upgradation ordered will involve only stepping up of pay of the senior on par with his junior in the upgraded scale of pay
(ii) It does not entitle him to claim for any arrears of pay;
(iii) On upgradation, the senior will not vacate his post and will continue to perform the duties attached to the existing post till he gets his normal promotion in his turn to the next higher category.
(iv) The seniors in one unit are eligible to the attendant benefits attached to the upgraded scale of pay that may be given to them only in the event of their normal promotion to a post carrying such scale and they are not eligible for the same on their upgradation to these posts:
(v) The solution ordered in this Government Order, is a one time affair and any subsequent movement upward or downward either in the Finance Unit or in the One Unit after the date of issue of this order will not come under the purview of the upgradation/stepping up of pay now ordered:
(vi) In respect of persons falling unde the following categories, the question of upgradation will be considered separately on a case-to-case basis.
In respect of persons falling under the following categories, the question of upgradation will be considered separately on a case-to-case basis.
(i) Suffered punishment at any stage:
(ii) Overlooked for promotion at any stage
(iii) Who are currently undergoing punishment
(iv) Against whom charges under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules or enquiry by Tribunal for Disciplinary Proceedings are pending or charge sheet filed before any criminal court:
(v) Who are currently on or had at any earlier occasion gone on leave on loss of pay without medical certificate which will not count for increment:
(vi) Who are now on 'Other duty' outside the regular line and whose service rights have not been terminated."
8. The above terms and conditions are quite essential to ensure that the benefit of the scheme reaches the deserving personnel. It was therefore ordered to obtain individual undertakings in the prescribed format from the seniors concerned to the effect that they accept the terms and conditions of this order."

3. The petitioners never approached the Tribunal within a reasonable time and therefore the respondent-State is bound to implement its order. The petitioners have attempted to challenge the impugned order by citing strange examples, which cannot create any right in their favour. Therefore, it is not within the province of this Court to interfere with the order impugned in this writ

petition. The Honourable Supreme Court in the decision reported in (Col. B.J. Akkara (Retd) vs. Government of India and others) (2006) 11 Supreme Court Cases 709 observed that isolated case forcing the government to issue an order implementing the decision of the High Court or Tribunal cannot be a precedent for the subsequent courts or Tribunal to implement the said order as if that is the Law of the land. In Para-26 of the said Judgment, the Honourable Supreme Court observed as under:-

"26. ....A particular judgment of the High Court may not be challenged by the State where the financial repercussions are negligible or where the appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the non-comprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realised, the State is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach finality in the case of others. Of course, the position would be viewed differently, if the petitioners plead and prove that the State had adopted a 'Pick-and-choose' method only to exclude the petitioners on account of mala fides or ulterior motives. Be that as it may. On the facts and circumstances, neither the principle of res judicata nor the principle of estoppel is attracted. The administrative law principles of legitimate expectation or fairness in action are also not attracted. Therefore, the fact that in some cases the validity of the circular dated 29.10.1999 (corresponding to the Defence Ministry Circular dated 11.09.2001) has been upheld and that decision has attained finality will not come in the way of the State defending or enforcing its circular dated 11.09.2001."

4. In the light of the above, the relief sought for in this writ petition cannot be granted. The writ petition is therefore dismissed. No costs.

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To

The State of Tamil Nadu
rep. by the Secretary to Government
Personnel & Administrative Reform Department
Fort St. George
Chennai 600 009